

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

WILLIE B. TUCKER,

Plaintiff,

v.

Case No. 05-2249-CM-JPO

SOCIAL SECURITY ADMINISTRATION, et al.,

Defendants.

Order Dismissing this Case Pursuant to Fed. R. Civ. P. 25

Willie B. Tucker, the *pro se* plaintiff, commenced this case on June 16, 2005. Willie Tucker died July 16, 2005. On October 5, 2005, the Defendants filed a suggestion of Tucker's death. *See* (Doc. 14). As of March 14, 2006, no probate estate has been opened in Wyandotte County on behalf of Tucker.

On December 12, 2005, the United States Marshal personally served Jeannette Pope, the daughter of Willie Tucker, with the Suggestion of Death. *See* (Doc. 17). Service of the Suggestion of Death has therefore been completed in the manner required by Fed. R. Civ. P. 25 and Fed. R. Civ. P. 4.

This case comes before the Court upon the Defendants' Motion to Dismiss this Case Pursuant to Fed. R. Civ. P. 25, or in the Alternative, to Dismiss for Lack of Prosecution, or in the Alternative, to Dismiss for Lack of Subject Matter Jurisdiction or Failure to State a Claim (Doc. 20). According to Rule 25(a)(1), if no timely motion for substitution is filed within 90 days of service of the suggestion of death, "the action shall be dismissed as to the deceased party." Fed. R. Civ. P. 25(a)(1). As of March 14, 2006, no person or entity has filed a motion for substitution on behalf of Willie B. Tucker. Because 90 days have elapsed since service of the suggestion of death on the heir of Willie B. Tucker, the Court dismisses this

case under Rule 25(a)(1). In light of this ruling, it is unnecessary for the Court to address the alternative grounds for dismissal urged by the Defendants.

IT IS THEREFORE ORDERED THAT the Defendants' Motion to Dismiss this Case Pursuant to Fed. R. Civ. P. 25, or in the Alternative, to Dismiss for Lack of Prosecution, or in the Alternative, to Dismiss for Lack of Subject Matter Jurisdiction or Failure to State a Claim (Doc. 20) is granted in part and denied in part as moot. This case is dismissed without prejudice under Fed. R. Civ. P. 25(a)(1). In light of that ruling, the Defendants' alternative grounds for requesting dismissal of this case are denied as moot.

s/ Carlos Murguia
Carlos Murguia
United States District Judge